



Nevada State Board of Medical Examiners

* * * MINUTES * * *

OPEN SESSION BOARD MEETING

Held in the Conference Room at the Offices of the
Nevada State Board of Medical Examiners
1105 Terminal Way, Suite 301, Reno, Nevada 89502

and videoconferenced to

the Conference Room at the Offices of the Nevada State Board of
Medical Examiners/Nevada State Board of Dental Examiners
6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118

FRIDAY, MARCH 11, 2011 – 8:30 a.m.

Board Members Present in Reno

Charles N. Held, M.D., President
Benjamin J. Rodriguez, M.D., Vice President
Javaid Anwar, M.D.
Beverly A. Neyland, M.D.
Theodore B. Berndt, M.D.
Michael J. Fischer, M.D.
Donna A. Ruthe
Sue Lowden

Board Members Absent

Valerie J. Clark, BSN, RHU, LUTCF, Secretary-Treasurer

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Staff/Others Present

Douglas C. Cooper, CMBI, Executive Director
Edward O. Cousineau, J.D., Deputy Executive Director
Lyn E. Beggs, J.D., General Counsel
Bradley O. Van Ry, J.D., Deputy General Counsel
Laurie L. Munson, Chief of Administration and Information Systems
Pamela J. Castagnola, CMBI, Interim Chief of Investigations
Lynnette L. Daniels, Chief of Licensing
Donya Jenkins, Finance Manager
Keith D. Marcher, J.D., Chief Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum
- Announcement of Appointment by the Governor, and Introduction of, New Board Member Sue Lowden
- *Charles N. Held, M.D., President*

The meeting was called to order by President Charles N. Held, M.D., at 8:30 a.m.

Ms. Beggs took roll call, and all Board Members were present with the exception of Ms. Clark. Ms. Beggs announced there was a quorum.

Dr. Held welcomed new Board Member Sue Lowden. Ms. Lowden stated she was familiar with many of the Board's issues through her service in the State Legislature and pleased to serve on the Board.

Agenda Item 2

APPROVAL OF MINUTES

- December 3, 2010 Board Meeting – Open/Closed Sessions
- December 30, 2010 Telephone Conference Board Meeting – Open Session

Dr. Fischer moved to approve the Minutes of the December 3, 2010 Board Meeting – Open/Closed Sessions. Dr. Rodriguez seconded the motion, and it passed unanimously.

Dr. Rodriguez moved to approve the Minutes of the December 30, 2010 Telephone Conference Board Meeting – Open Session. Ms. Ruthe seconded the motion, and it passed unanimously.

Agenda Item 3

LEGISLATIVE UPDATE

- *Keith L. Lee, Esq., NSBME Legislative Representative; Douglas C. Cooper, CMBI, Executive Director*

This item was not discussed at the meeting.

Agenda Item 4

CONSIDERATION AND ACTION REGARDING PROPOSED AMENDMENTS TO
NEVADA ADMINISTRATIVE CODE CHAPTER 630

- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, to Add a Provision Prescribing Circumstances in Which the Board of Medical Examiners May Not Enter Into Remediation Agreements
- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, to Add a Provision Providing for Issuance of a Special Event License and Prescribing the Fee for Issuance of the License
- *Edward O. Cousineau, J.D., Deputy Executive Director*

Mr. Cousineau explained that the first proposed regulation before the Board involves limitations on the use of remediation agreements. The Board was directed by the Legislature to craft regulations pursuant to statute at the time the remediation agreement statutory language was put in place during the last legislative session. The proposed regulation places constraints on the use of remediation agreements in instances where a patient has suffered serious harm or death as a result of violation of Chapter 630, or where the licensee intentionally, knowingly or recklessly committed the violation, or where the licensee has entered into a remediation agreement for the same or a substantially similar violation within the immediately preceding five years. The Legal Division has not yet utilized a remediation agreement in a case. The law will sunset at the end of June, absent input from the Legislature, so in adopting this regulation, the Board would be accomplishing its statutory mandate, but the regulation may not be long in its use. The only public input received with regard to the proposed regulation was from an interested party in Las Vegas who was concerned that "serious harm" needed to be defined in the regulation. It is the position of the Legal Division that it does not need to be defined therein; rather it should be evaluated on a case-by-case basis by the Investigative Committee. Additionally, the Legislative Counsel Bureau reviewed the proposed regulation and had no concerns or comments, so he does not believe a change in that regard is necessary.

Weldon Havins, M.D., J.D., stated he believed he was on the Board's mailing list; however, neither he nor the Clark County Medical Society had received notice of the regulation or the workshop. He stated there were concerns regarding some of the provisions of the proposed regulation, and on its face it would appear the Board was abrogating some of its own discretion to use its judgment in making decisions regarding when remediation agreements should be used.

Mr. Cousineau stated that notice of the workshop and hearing was provided in the same manner as it had been in the past, but that Dr. Havins could request to be mailed notices regarding workshops and hearings, and the Board would do so in the future.

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, stated that, if adopted, the regulation would be a temporary regulation that would expire in about 60 days. Mr. Cousineau explained that this regulation was given permanent regulation status by the Legislative Counsel Bureau, and would therefore be a permanent regulation.

Discussion ensued regarding whether the Board should adopt the proposed regulation.

Dr. Held moved that the Board table a decision on the proposed regulation. Dr. Rodriguez seconded the motion, and it passed unanimously.

Mr. Cousineau explained that the second proposed regulation concerned special event licenses. The Board was directed by the Legislature during the last legislative session to adopt regulations related to special event licenses. He then outlined the provisions contained in the proposed regulation.

Discussion ensued regarding under what circumstances it would be appropriate for a physician to apply for a special event license as opposed to an unrestricted license.

Dr. Rodriguez moved that the Board adopt the proposed regulation. Dr. Neyland seconded the motion, and it passed unanimously.

Agenda Item 5

CONSIDERATION, DISCUSSION AND ACTION REGARDING PARTICIPATION IN VERIDOC

- *Rolf Sletten, President, VeriDoc; Douglas C. Cooper, CMBI, Executive Director;*
Lynnette L. Daniels, Chief of Licensing

Ms. Daniels introduced Rolf Sletten, President of VeriDoc, to the Board.

Mr. Cooper explained that the Board is currently accepting license verifications from VeriDoc, which the Board approved at its last regular meeting, and before the Board at this meeting was a request that the Board consider utilizing VeriDoc for NSBME license verifications to be sent to other boards and entities.

Mr. Sletten described his background and how VeriDoc came to be. He then described how VeriDoc works and showed the Board the VeriDoc website and how a licensee utilizes it. He stated that at that time, 27 boards were utilizing VeriDoc for license verifications.

Discussion ensued regarding the safeguards in place within the VeriDoc system to prevent someone from corrupting the system, accessing or corrupting the data within the system, or creating a false website that appeared to be the VeriDoc site, with regard to how the data will be securely transferred from the Board's database to the VeriDoc system, and regarding the potential savings in staff time through utilization of VeriDoc.

Ms. Daniels inquired as to how the Board would be able to reconcile the number of license verifications prepared by VeriDoc with the fees received from VeriDoc for those license verifications.

Ms. Ruthe moved that the Board participate in VeriDoc. Dr. Neyland seconded the motion, and it passed unanimously.

Agenda Item 6

DISCUSSION REGARDING HOW BOARD HANDLES APPLICANTS WHOM IT DISCOVERS HAVE PROVIDED FALSE OR MISLEADING INFORMATION ON THEIR LICENSE APPLICATIONS

- Charles N. Held, M.D., President; Douglas C. Cooper, CMBI, Executive Director;
Lynnette L. Daniels, Chief of Licensing

Dr. Held explained he had requested this matter be placed on the agenda and had discussed it in detail with Mr. Cooper. He stated there have been many applicants who have appeared before the Board who had what turned out to be relatively insignificant inconsistencies on their applications, and the Board had almost always granted them licensure. Therefore, he wanted to discuss whether there may be a way to streamline the process.

Mr. Cooper stated the handout provided at the meeting showed what the Board is currently authorized to do in instances where it believes an applicant has falsified information or intentionally provided misleading information on an application. Mr. Cooper conducted a survey through ExecNet and found that all medical boards are faced with the same problem, and that Nevada is handling these in the same manner most everyone else is, which is evaluating the information, particularly with respect to three things – severity, the nature of the information and the age of the information – and if a determination is made that the applicant is telling the truth that it was an absent-minded omission or that the information was not falsified, allowing the applicant to continue with the process. Some states are a little harder on those applicants and begin investigations immediately. Nevada statutes already allow the Board to open an investigation on a licensee when it receives information after the licensee has been licensed that information was falsified or intentionally omitted on the licensee's application. Therefore, what the Board needs to do is create a process to handle those situations where the Licensing Division finds an omission or suspects falsification of information on an application, before the applicant has been licensed, whether it be to continue to bring them to the full Board, or to the Executive Committee, or to the License Application and Malpractice Review Panel.

Discussion ensued regarding the questions on the application which are generally the ones answered incorrectly and whether the questions need to be revised so there is no room for confusion. Mr. Cooper explained that the questions have been revised in the past for clarification, but could be reviewed again if the Board so desired.

Discussion ensued regarding the way the applications are currently screened when a question arises as to a response provided on the application. Mr. Cooper suggested that the License Application and Malpractice Review Panel review those applications and make a determination as to which applicants can be licensed and which should go before the full Board for a decision. Discussion ensued regarding the appropriate composition of the panel that would review those applications, and regarding possible options the Board could pursue with respect to those applications and the applicants.

Dr. Held moved that the License Application and Malpractice Review Panel be tasked with reviewing those applications which contain the aforementioned types of inconsistencies and make a determination as to which applicants can be licensed and which need to appear before the full Board for a decision. Dr. Berndt seconded the motion. Dr. Rodriguez agreed it would be a good idea, and stated that at least one member of the panel should be an experienced Board Member who has reviewed applications containing those types of inconsistencies in the past. A vote was taken on the motion, and it passed unanimously.

Agenda Item 7

DISCUSSION REGARDING ADJUDICATION PROCESS TRAINING FOR BOARD MEMBERS

- Douglas C. Cooper, CMBI, Executive Director; Lyn E. Beggs, J.D., General Counsel

Ms. Beggs explained that because the Board currently has several new members and will soon lose two of its seasoned members, it was determined it would be a good idea to hold an in-depth training for current Board Members with regard to adjudication of cases. This training will also be provided to new members as they are appointed to the Board. This training will be in addition to the training Board Members receive through the Attorney General's Office, and is more specific to this Board and its particular statutes and regulations related to hearings and adjudications. A rough outline of topics to be covered in the training was provided to the Board Members with their meeting packets. Staff would like to hold the training prior to the June Board meeting, and is estimated it will last an hour to an hour-and-a-half. Training will be provided in Las Vegas and in Reno.

Dr. Rodriguez suggested that periodic review would be beneficial for all Board Members.

Agenda Item 8

HEARING ON ORDER TO SHOW CAUSE IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. MARILYN ATKINS, R.R.T., BME CASE NO. 10-23244-1

- Lyn E. Beggs, J.D., General Counsel

Ms. Atkins was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

As Dr. Held and Dr. Rodriguez were not adjudicating Board Members for this agenda item, Dr. Anwar presided over the matter.

Ms. Beggs stated that the Board had before it a Motion for Order to Show Cause why revocation of Ms. Atkins' license to practice respiratory therapy should not be imposed at that time. The Board had approved a settlement agreement with respect to its Complaint against Ms. Atkins at its September 10, 2010 meeting. The settlement agreement contained multiple terms and conditions, including that her license would be revoked, but the revocation would be stayed and she would be placed on probation for 48 months with terms and conditions. As is indicated in the Motion for Order to Show Cause, Ms. Atkins has failed to comply with conditions 1 and 5 of the settlement agreement, and is therefore out of compliance with the terms of the settlement agreement. Therefore, it is the position of the Investigative Committee that the stayed revocation of Ms. Atkins' license should be imposed. Ms. Atkins was duly noticed of the hearing and was given the option to appear in Las Vegas.

Dr. Neyland moved that the Board lift the stay and impose the revocation. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 9

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ERNESTO RUBIO, M.D.*, BME CASE NO. 09-11658-1

- Edward O. Cousineau, J.D., Deputy Executive Director

Dr. Rubio was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

As Dr. Held and Dr. Rodriguez were not adjudicating Board Members for this agenda item, Dr. Anwar presided over the matter.

Mr. Cousineau outlined the facts of the case and the terms of the proposed settlement agreement.

Discussion ensued regarding the facts of the case.

Dr. Fischer moved that the Board accept the settlement agreement. Dr. Anwar seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 10

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DAVID SACK, M.D.*, BME CASE NO. 09-28070-1

- Edward O. Cousineau, J.D., Deputy Executive Director

Dr. Sack was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

As Dr. Held and Dr. Rodriguez were not adjudicating Board Members for this agenda item, Dr. Anwar presided over the matter.

Mr. Cousineau outlined the facts of the case and the terms of the proposed settlement agreement.

Ms. Ruthe moved that the Board accept the settlement agreement as presented. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 11

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF
THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JAMES EDWARD
BEECHAM, M.D., BME CASE NO. 10-9883-1

- Bradley O. Van Ry, J.D., Deputy General Counsel

Dr. Beecham was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

As Dr. Held was not an adjudicating Board Member for this agenda item, Dr. Rodriguez presided over the matter.

Mr. Van Ry explained that the Board had accepted Dr. Beecham's voluntary surrender of his Nevada medical license at its meeting on December 3, 2010. Subsequent to that, Dr. Beecham agreed to reimburse the Board's costs and expenses associated with the case against him, which has been memorialized in the proposed settlement agreement before the Board at this meeting.

Discussion ensued regarding the terms of the settlement agreement and whether they were appropriate under the circumstances. Mr. Van Ry stated that Dr. Beecham was currently in Florida, essentially retired, and had indicated to Mr. Van Ry no intention to return to Nevada.

Dr. Rodriguez moved that the Board accept the settlement agreement. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 12

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. RONALD FOOTE, M.D.,
BME CASE NO. 10-12899-1

- Edward O. Cousineau, J.D., Deputy Executive Director

Dr. Foote was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

Dr. Rodriguez recused himself from consideration of the matter.

Dr. Anwar disclosed that Dr. Foote had been a patient of his years ago, but was not currently a patient of his, and stated it would not affect his decision in the matter.

As Dr. Held was not an adjudicating Board Member for this agenda item, and Dr. Rodriguez had recused himself, Dr. Anwar presided over the matter.

Mr. Cousineau outlined the facts of the case and the terms of the proposed settlement agreement.

Discussion ensued concerning the fine and the continuing medical education included in the proposed settlement.

Ms. Ruthe moved that the Board accept the settlement agreement as presented. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 13

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF
THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ABDUL-SAMI
SIDDQUI, M.D., BME CASE NO. 10-12158-1

- Edward O. Cousineau, J.D., Deputy Executive Director

Dr. Siddiqui was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

As Dr. Held was not an adjudicating Board Member for this agenda item, Dr. Rodriguez presided over the matter.

Mr. Cousineau outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement. Dr. Rodriguez seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 14

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JOEL WASHINSKY, M.D.,
BME CASE NO. 10-8162-1

- Lyn E. Beggs, J.D., General Counsel

Dr. Washinsky was not present. A. Maria Maskall, Esq. was present in Las Vegas on behalf of Dr. Washinsky.

Dr. Held named the adjudicating Board Members who would be considering the matter.

As Dr. Held was not an adjudicating Board Member for this agenda item, Dr. Rodriguez presided over the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Rodriguez moved that the Board accept the settlement. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 15

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. EDWARD VICTORIA, M.D.*,
BME CASE NO. 11-33039-1

- Lyn E. Beggs, J.D., General Counsel

Dr. Victoria was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

As Dr. Held was not an adjudicating Board Member for this agenda item, Dr. Rodriguez presided over the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Rodriguez moved that the Board accept the settlement. Ms. Ruthe seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 16

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. SUDHIR E. FINCH, M.D.*,
BME CASE NO. 11-31115-1

- Lyn E. Beggs, J.D., General Counsel

Dr. Finch was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

As Dr. Held was not an adjudicating Board Member for this agenda item, Dr. Rodriguez presided over the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Anwar moved that the Board accept the settlement. Dr. Rodriguez seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 17

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ANTHONY CRUZ, C.R.T.*,
BME CASE NO. 10-23453-1

- Lyn E. Beggs, J.D., General Counsel

Mr. Cruz was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

As Dr. Held was not an adjudicating Board Member for this agenda item, Dr. Rodriguez presided over the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Neyland moved that the Board accept the settlement. Dr. Rodriguez seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 18

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ABDEL KHALEK, M.D.*,
BME CASE NO. 10-8734-1

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Dr. Khalek was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

As Dr. Held was not an adjudicating Board Member for this agenda item, Dr. Rodriguez presided over the matter.

Mr. Van Ry outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Rodriguez moved that the Board accept the settlement. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 19

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. LORRAINE CHUN, M.D.*,
BME CASE NO. 10-19389-1

- *Lyn E. Beggs, J.D., General Counsel*

Dr. Chun was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement.

Discussion ensued regarding why no requirement to complete additional continuing medical education units was included in the terms of the settlement agreement.

Ms. Ruthe moved that the Board accept the settlement as written. Dr. Anwar seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 20

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. QUAN HADUONG, M.D.*, BME CASE NO. 10-11137-1

- Lyn E. Beggs, J.D., General Counsel

Dr. Haduong was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Anwar moved that the Board accept the settlement. Dr. Berndt seconded the motion, and it passed, with Dr. Held voting against the motion and all other adjudicating Board Members voting in favor of the motion.

Agenda Item 21

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. WILLIAM MISHLER, M.D.*, BME CASE NO. 11-5674-1

- Lyn E. Beggs, J.D., General Counsel

Dr. Mishler was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement. Dr. Berndt seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 22

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. MICHAEL FORREST, P.A.-C.*, BME CASE NO. 10-18540-1

- Lyn E. Beggs, J.D., General Counsel

Mr. Forrest was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Anwar moved that the Board accept the settlement as presented. Ms. Ruthe seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 23

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF
THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. SEAN BEATY, M.D., BME
CASE NO. 10-31729-1

- Bradley O. Van Ry, J.D., Deputy General Counsel

Dr. Beaty was not present.

Dr. Held named the adjudicating Board Members who would be considering the matter.

Mr. Van Ry outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Anwar moved that the Board accept the settlement agreement. Ms. Ruthe seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 24

CONSIDERATION OF AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL
EXAMINERS VS. PAUL CUTARELLI, M.D., BME CASE NO. 08-29655-3

- Paul Cutarelli, M.D.; David J. Mortensen, Esq.; Lyn E. Beggs, J.D., General Counsel

Dr. Cutarelli was not present. David J. Mortensen, Esq. was present as counsel for Dr. Cutarelli.

Dr. Held named the adjudicating Board Members who would be considering the matter.

As Dr. Held and Dr. Rodriguez were not adjudicating Board Members for this agenda item, Dr. Anwar presided over the matter.

Ms. Beggs stated that she and Mr. Mortensen were jointly making this presentation to the Board.

Ms. Beggs then explained that the matter was originally adjudicated at the Board's June 2010 meeting regarding the issues that had gone to a full hearing in January 2010. Following adjudication, the Board found Dr. Cutarelli had violated the Medical Practice Act and issued a Findings of Fact, Conclusions of Law, and Order. Dr. Cutarelli filed a timely Petition for Judicial Review pursuant to NRS 233B.130, and that petition was currently pending, with an agreed-upon stay pending the outcome of the Board's decision at this meeting. In reviewing the Petition for Judicial Review, staff determined there was a lot of validity in the concerns raised by Dr. Cutarelli through his counsel. It was thereafter agreed by the parties that the most expeditious and judicious use of resources for both parties would be to come to a compromised resolution of the matter. Should the Board adopt the proposed Amended Findings of Fact, Conclusions of Law and Order, the Petition for Judicial Review will be dismissed. The Amended Findings of Fact, Conclusions of Law and Order does not distort the facts that were presented at the hearing in any way, and therefore is factually accurate and reflective of what occurred.

Dr. Berndt moved that the Board accept the Amended Findings of Fact, Conclusions of Law and Order. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 25

REPORTS

- Physician Assistant Advisory Committee - *John B. Lanzillotta, P.A.-C, Advisory Committee Member*
- Investigative Committees
 - Consideration of Cases Recommended for Closure by the Committees
 - *Charles N. Held, M.D., President, Chairman, Investigative Committee A;*
 - *Benjamin J. Rodriguez, M.D., Vice President, Chairman, Investigative Committee B*
- Investigations Division
 - Status of Investigative Caseload - *Pamela J. Castagnola, Interim Chief of Investigations*
 - Quarterly Compliance Report - *Johnna S. LaRue, Compliance Officer*
- Nevada State Medical Association Report - *Lawrence P. Matheis, Executive Director, Nevada State Medical Association*
- Clark County Medical Society Report - *Mitchell D. Forman, D.O., FACR, FACOI, FACP, President, Clark County Medical Society; Benjamin J. Rodriguez, M.D., Board Vice President*

Physician Assistant Advisory Committee

Roy M. Cary, Jr., P.A.-C, stated the Advisory Committee was requesting the Board's support of a regulation or statute that would clarify that a physician assistant can perform any medical service that the law says a physician can perform as long as it is appropriate to the physician assistant's training and experience and within the supervising physician's scope of practice. The effect of this would result in eliminating some time-consuming tasks of the physician, thereby making them more accessible and available for more complex patient problems.

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, asked whether there was a current bill draft before the Legislature and Mr. Cary stated there was not. Mr. Matheis stated they would take a look at it before the next legislative session.

Discussion ensued regarding whether it would be appropriate for the Board to support this proposed legislation.

Mr. Cooper stated Board staff would work with the Advisory Committee on this and bring it back to the Board in June with an update.

Investigative Committees

- Consideration of Cases Recommended for Closure by the Committees

Dr. Held reported that Investigative Committee A had met and considered 121 cases, authorized the filing of a formal complaint in 4 cases, sent 1 case out for peer review, requested an appearance in 8 cases, issued 15 letters of concern, referred 8 cases back to investigative staff for further investigation or follow-up, and recommended closure of 85 cases, for a total of 100 closures, including the cases in which letters of concern were issued.

Dr. Held moved to approve for closure the cases recommended by Investigative Committee A. Dr. Rodriguez seconded the motion, and it passed unanimously.

Dr. Rodriguez reported that Investigative Committee B had met and considered 92 cases, authorized the filing of a formal complaint in 1 case; sent 1 case out for peer review, requested an appearance in 7 cases, issued 15 letters of concern, referred 3 cases back to investigative staff for further investigation or follow-up, and recommended closure of 65 cases, for a total of 80 closures, including the cases in which letters of concern were issued.

Dr. Rodriguez moved to approve for closure the cases recommended by Investigative Committee B. Dr. Held seconded the motion, and it passed unanimously.

Investigations Division

- Status of Investigative Caseload

Ms. Castagnola reported that there were currently 404 open investigative cases, which was an increase from 384 open cases as of the December 2010 Board meeting. The current number of cases per investigator was 66 on average. There were 25 peer reviews in the field and 10 peer reviews awaiting assignment.

- Quarterly Compliance Report

Mr. Cooper described what information is included in the Quarterly Compliance Reports. In 2010, the Board's compliance unit collected \$136,628.57 in costs and \$46,100.00 in fines. The costs are reimbursement to the Board of its costs incurred related to investigation and prosecution of cases and the fines are sent to the Treasurer's Office.

Dr. Held moved to accept the Quarterly Compliance Report. Dr. Neyland seconded the motion, and it passed unanimously.

Nevada State Medical Association Report

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association (NSMA), reported that out of the 500 bills that had been introduced at the Legislature to date, the NSMA was tracking about 120 that more or less could affect medicine. The NSMA holds a weekly legislative core group at which they provide a weekly summary of all bills that do or could affect physicians. He stated he thought most of bills that will affect medicine will have to do with prescribing and prescription issues. Prescription drug abuse is the top cause of drug-related deaths in the state, by a lot. The NSMA will be hosting a physicians' day at the Legislature on April 14, and invited Board members to attend. The NSMA will hold their annual meeting on April 15.

Dr. Fischer, Board liaison to the NSMA, stated he planned to attend the annual meeting.

Clark County Medical Society Report

Debbie Trent, Executive Director of the Clark County Medical Society (CCMS), reported that she had been with the CCMS since December 1 and they are in the process of some restructuring, strategic planning and developing ways of giving value to the physicians in order to increase their membership.

Dr. Rodriguez stated he had nothing to add.

Agenda Item 26

EXECUTIVE STAFF/STAFF REPORTS

- Consideration and Approval of Revisions to *Policy and Procedure Manual*
 - *Douglas C. Cooper, CMBI, Executive Director*
- Safe Injection Practices Campaign BDR Requiring Licensee Attestation of Compliance With CDC Safe Injection Practice Guidelines to Renew License - *Shawna M. Rice, Investigator; Lynnette L. Daniels, Chief of Licensing*
- Quarterly Update on Finances - *Donya Jenkins, Finance Manager*
- Pharmaceutical Diversion and Fraud Training - *Pamela J. Castagnola, CMBI, Interim Chief of Investigations*
- Informational Items
 - Creation of Perfusionist Advisory Committee - *Douglas C. Cooper, CMBI, Executive Director*

Consideration and Approval of Revisions to *Policy and Procedure Manual*

Mr. Cooper described the proposed changes to the Board's *Policy and Procedure Manual*. He stated that some restructuring had been done and the Internal Affairs Committee was dissolved, so some of the work of that committee was assigned to the Executive Committee. Accordingly, changes to the position descriptions for the President and Secretary-Treasurer needed to be made. Additionally, the sick leave policy would be changed to require that sick leave be taken in one-half-hour increments.

Discussion ensued regarding the reasoning for the change in the sick leave policy.

Dr. Berndt moved to approve the proposed changes. Dr. Neyland seconded the motion, and it passed unanimously.

Safe Injection Practices Campaign BDR Requiring Licensee Attestation of Compliance With CDC Safe Injection Practice Guidelines to Renew License

Ms. Castagnola reported that the Safe Injection Practices BDR was discussed at the last Board meeting and it was debated whether it would be appropriate to require physicians to complete CMEs to show that they were in compliance with safe injection practices in order to become licensed and/or to renew their licenses, and whether it would be appropriate to require that anyone who practiced under the physician's license, such as medical assistants, also be in compliance. Currently, the focus of the bill has shifted away from requiring CME and towards a requirement that health professionals submit an attestation at the time of renewal of their licenses that they, and each person practicing under their licenses, are in compliance with the CDC guidelines for safe injection practices, and the format of that is proposed to be a checkbox on their license renewal application.

Ms. Daniels stated such a checkbox would be an easy addition to both the online and paper renewal forms, and that it would apply to MDs and physician assistants.

Discussion ensued regarding the appropriateness of the requirement and how, if the bill passes, the requirement would be implemented.

Quarterly Update on Finances

Ms. Jenkins highlighted the information contained in the financial documents provided to the Board for the fourth quarter of 2010 – the Balance Sheet, the Profit and Loss, and the Profit and Loss Budget vs. Actual. She stated the Balance Sheet is a snapshot of where the Board was at the end of the year. These documents covered a quarter, rather than a full year, because the Board has not yet undergone its annual audit due to the fact that Assembly Bill 21, if passed, will remove the requirement for the audit, and therefore it was deemed appropriate to stay the audit until the legislative session concluded. If AB 21 does not pass, staff will begin the audit process following the legislative session, and will present the actual audited financial statement for 2010 at the September Board meeting. She explained there was a drastic improvement in both the number of cases the Board closed and in the amount of compliance receivables the Board collected in 2010 over 2009.

Discussion ensued regarding the compliance receivables that are deemed to be uncollectible and what should be done with those. Ms. Jenkins stated that staff would be bringing a proposal to the Board at a future meeting to write off those uncollectible receivables.

Mr. Cooper thanked the staff for their part in reducing the Board's expenses pursuant to the austerity program he implemented.

Pharmaceutical Diversion and Fraud Training

Ms. Castagnola explained that the Reno Investigators attended training on February 22 and 24, presented jointly by Detective Scott Smith of the Reno Police Department and Joe Depczynski, Inspector/Investigator for the Nevada Board of Pharmacy. Issues covered were the new fraud alert system, case studies from local prescription fraud and diversion cases, video surveillance systems in pharmacies, how to handle prescribing and diversion investigations, HIPPA laws, an overview of the pharmacy inspection process and pharmacy requirements for pharmacists to avoid liability cases. One of the most important pieces of information for the Board's licensees to know is that they need to be aware of possible problems in pharmacies, such as pharmacists or pharmacist techs filling the wrong prescriptions, misreading prescriptions, having patients call and saying they think they have received the wrong prescription or are having an adverse reaction to the prescription. Pharmacists and licensees need to take these things seriously. Licensees who don't currently have a procedure instituted in their offices to double-check these types of things or for their staff to bring to their attention a possible problem with a prescription, should think about doing so, as the Board regularly receives complaints from patients that they received the wrong prescription or wrong amounts of the prescription.

Informational Items

- Creation of Perfusionist Advisory Committee

Mr. Cooper explained that the Board currently has a physician assistant advisory committee and a respiratory therapist advisory committee, and needs to form a perfusionist advisory committee. He stated he did not know how the committees were formed in the past – whether the full Board voted on it or whether it was given to the Internal Affairs Committee or the Executive Committee. He proposed that the Executive Committee review the applications received and choose the first three members for the advisory committee. Alternatively, the matter could be agendized and discussed by the full Board at the next meeting.

Dr. Anwar moved that the Executive Committee review the applications and choose the advisory committee members. Dr. Fischer seconded the motion, and it passed unanimously.

Agenda Item 27

LEGAL REPORTS

- Board Litigation Status - *Lyn E. Beggs, J.D., General Counsel*
- Report Regarding Recent Review of NAC Chapter 630 - *Edward O. Cousineau, J.D., Deputy Executive Director*

Board Litigation Status

Ms. Beggs reported there were 86 open cases in the Legal Division, 17 of which were presented to the Board at this meeting. There were 6 cases in the CMT process, 1 case pending legal review, 16 cases awaiting the filing of a formal complaint, 39 cases in which a formal complaint had been filed that were pending, and 3 petitions for judicial review were pending. The number of civil court legal matters, which are matters outside the Legal Division's normal course of practice, had increased, and there were 4 pending at that time.

Report Regarding Recent Review of NAC Chapter 630

Mr. Cousineau explained that state law requires the Board to review its regulations every 10 years to confirm their accuracy, authenticity and necessity, and to determine whether there is a desire to make modifications. Last December, staff discussed various possible modifications to the Board's regulations. At the beginning of January, Governor Sandoval issued an executive order putting a freeze on proposed regulations that don't meet various exceptions. One of those exceptions is public health, and our regulatory efforts would fall under public health, so after July 1, which is the date we can again move to adopt permanent regulations, rather than temporary regulations, staff will begin bringing various proposals to the Board to ask for authority to proceed with the regulatory adoption process.

Agenda Item 28

LICENSURE RATIFICATION

- Ratification of Licenses Issued, and Reinstatements of Licensure and Changes of Licensure Status Approved Since the December 3, 2010 Board Meeting

Dr. Rodriguez moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the December 3, 2010 Board Meeting. Dr. Fischer seconded the motion, and it passed unanimously.

Agenda Item 29

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

29(a) Kent Swaine, M.D.

This item was not discussed at the meeting.

29(b) Sheikh Zain Ud-Din Kadri, M.D.

Dr. Held asked Dr. Kadri whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Berndt asked Dr. Kadri about his current practice, and Dr. Kadri stated he is the Medical Director for a biotechnology company, and also practices clinical medicine there.

Dr. Berndt questioned Dr. Kadri regarding his affirmative response to Question 12 on his application for licensure.

Dr. Kadri explained the circumstances surrounding the two pending malpractice cases against him.

Dr. Berndt asked Dr. Kadri regarding whether his affirmative response to Question 19 on his application for licensure was in error or whether there were any disciplinary actions taken against him during his training.

Dr. Kadri confirmed there were no disciplinary actions taken against him during his training and stated that his affirmative response to Question 19 was simply a mistake.

Dr. Berndt questioned Dr. Kadri regarding his affirmative responses to Questions 31 and 33 on his application for licensure.

Dr. Kadri explained the circumstances surrounding the various problems he had with Riverton Memorial Hospital and Lander Regional Hospital in Wyoming, and the investigation by the Wyoming Board of Medicine, which was ultimately closed with no action taken against him.

Dr. Rodriguez moved that the Board grant Dr. Kadri's application for licensure. Dr. Neyland seconded the motion, and it passed unanimously.

29(c) Gayle Schantzen, M.D.

Dr. Held asked Dr. Schantzen whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did.

Dr. Held moved that the Board go into Closed Session. Ms. Ruthe seconded the motion, and it passed.

Upon returning to Open Session, Dr. Anwar moved that the Board grant Dr. Schantzen's application for licensure. Dr. Neyland seconded the motion, and it passed unanimously.

29(d) John Paul McCarthy, M.D.

Dr. Held asked Dr. McCarthy whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Rodriguez asked Dr. McCarthy about his comments that the one malpractice claim that had been filed against him changed his practice.

Dr. McCarthy explained the circumstances surrounding the single malpractice claim against him and how it changed the way he practices.

Dr. Rodriguez asked Dr. McCarthy about his board certification, and Dr. McCarthy stated he was board certified by the American Association of Physician Specialists, which is the second group that certifies E.R. physicians.

Dr. McCarthy described the circumstances surrounding alleged patient care issues involving him while he was at Rice Memorial Hospital in Minnesota, and stated no formal complaints were filed, no hearings were held and that he never received any feedback regarding the alleged incidents.

Dr. Rodriguez moved that the Board grant Dr. McCarthy's application for licensure. Dr. Fischer seconded the motion, and it passed unanimously.

Agenda Item 30

MATTERS FOR FUTURE AGENDA

Mr. Cooper stated the following items would be included on the agenda of a future Board meeting: a report on utilization of VeriDoc; a report on creation of the perfusionist advisory committee; a legislative wrap-up by the Board's lobbyist, Keith Lee; the Board's annual report for 2010; the results of the Board's annual audit; and election of officers.

Agenda Item 31

PUBLIC COMMENT

Dr. Held asked whether there were any members of the public present who would like to make a public comment, and there were none.

ADJOURNMENT

Dr. Rodriguez moved to adjourn the meeting. Dr. Anwar seconded the motion, and Dr. Held adjourned the meeting at 1:27 p.m.

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